

Nottingham Planning Board  
May 11, 2016

1 **Accepted: June 8, 2016**

2 **Members Present:** Dirk Grotenhuis, Chair; Eduard Viel, Vice-Chair; Susan Mooney,  
3 Secretary; Gary Anderson, SRPC Rep; John Morin; Teresa Bascom; Robert “Buzz”  
4 Davies, Alternate;

5 **Members Absent:** Charlene Andersen, Ex Officio

6 **Others Present;** Tiler Eaton, Ex- Officio Alternate; Paul Colby, Code Administrator;  
7 JoAnna Arendarczyk, Land Use Clerk; Tim & Cleste Schmitt, Abutter; Dave Finn, Town  
8 Resident; Kevin & Karen Higginbotham, Abutter; Peter Landry, Surveyor; Shane  
9 Wilson, Abutter; Joe Coronati, Jones & Beech Engineers; Roscoe Blaisdell, Surveyor;  
10 Steve LaMonica, Abutter; Sam Demeritt, Nottingham Conservation Commission; Ken &  
11 Gloria Sachs, Applicant; Tara Saxton, Applicant; Christine Tofani, Abutter; Marian &  
12 Steve Tarafe, Abutter; Dan & Marna St. Onge, Abutter; Scott Gove, Abutter; Jose Guera,  
13 Abutter; Steve & Marian Tatarczuk, Abutter; Kevin Jordan, Abutter; Chris Albert, Jones  
14 & Beech Engineers; Cindy Bloom, Abutter; Lilia Guerra, Abutter; Bill & Janet Hall,  
15 Abutter; Pam & Jim Kelly, Abutter; Martha Smith, Abutter

16 **Call to Order: 7:00pm**

17 Mr. Colby spoke to the Board regarding the legal issue raised from the last meeting, April  
18 27, 2016. He stated that the reply from counsel (provided to each Board member  
19 separately from the binder packets) is not for public knowledge. However the letter sent  
20 to the attorney (*attached*) and the discussion regarding the issue needs to be done in a  
21 public session. The applicants will be allowed to ask questions during their Public  
22 Hearings and Mr. Colby as the Board’s acting agent will answer. The issue needs to be  
23 raised during each Public Hearing which this matter applies to.

24 Mr. Colby allowed the Board members to silently read the lawyer’s reply. Once they  
25 read the reply Mr. Chairman asked for a vote for those in favor or opposed to accepting  
26 the opinion of the Town Lawyer.

27 **Vote: 6-1-0 The Opinion of the Lawyer was accepted**

28 Mr. Colby informed the public that “Our Town attorney has advised this Board on the  
29 legal question on how to do we calculate the 30,000 square foot buildable area? Do we  
30 use the 20 foot or the 50 foot setbacks? Our attorney states that this Board shall use the  
31 50 foot setbacks to determine all buildable area of the 30,000 square foot contiguous area  
32 lot envelope. This is based on his opinion of reading our Subdivision Regulations and  
33 our Zoning regulations as well as Doyle vs. the Town of Gilmanton, a very similar case  
34 decided in the courts in 2007.”

35 The Cases pertaining to the legal issue:

- 36 • **Case #P16-004-SUB “The Smoke Street Subdivision”**
- 37 • **Case #P16-005-SUB “The Flutter Street Subdivision”**
- 38 • **Case #P16-007-SUB “The Anderson Subdivision”**

39 **Applicant’s opportunity to speak to the legal issue:**

40 Mr. Landry, the surveyor for both Case #P16-004-SUB “The Smoke Street Subdivision”,  
41 and for Case #P16-007-SUB “The Anderson Subdivision”, asked for the attorney’s reply  
42 to be read or copies made for the applicants. Mr. Colby replied that was not  
43 recommended by our attorney, it is “client/ attorney privilege”.

44 Mr. Landry gave some history on the issue: In the Planning Board section of the 2014  
45 Town Report it talks about three (3) changes were explored for warrant articles for 2015.  
46 One of the changes (Article #2 on 2015 Town Election ballot) “will reduce setbacks in

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47 lots of two acres or greater from the side and rear property lines for accessory buildings.  
48 The new set back will be no less than 20 feet from property lines.” The change was a  
49 result of a joint meeting between the Planning Board and the Zoning Board of  
50 Adjustment. He then summarized the section regarding Article II in the minutes from the  
51 2015 Annual Meeting, when the vote for the setbacks change was: YES 691 NO 348.  
52 Mr. Landry read the section on lot size in the current Zoning Ordinance: “Each lot must  
53 contain a 200’x 200’ square fit for building or a thirty thousand (30,000’) square foot  
54 contiguous area lot envelope in which a house and septic system shall be placed to meet  
55 all existing setbacks ordinances....” He stated that in his opinion and in talking with the  
56 Building Inspector a year ago “we’d be able to stretch the 30K to a point 50 feet on the  
57 road 20 feet on the sides and your appropriate setback distance from the wetland and that  
58 is basically what we’ve done.” He asked Mr. Colby if the attorney addressed the action  
59 the Town took to reduce the setbacks and if the septic system can be within 20 feet from  
60 the lot line and the septic and the house have to be part of the 30K than why can’t the  
61 30K be measured in the 20 foot setback?  
62 Mr. Colby replied that the attorney said the more stringent setback requirement is the 50  
63 foot setback for the 30k area for the dwelling. That setback was not changed, the septic  
64 setback was. Septics and outbuildings can be placed within the 20 foot setback. The  
65 attorney suggested a language change for the future.  
66 Mr. Colby informed the applicants, which this ruling affects, that they have two options:  
67 1. Redraw plans to show the 30K buildable area within the 50 foot setbacks  
68 2. Appeal to the Zoning Board of Adjustment and seek relief from them on this issue

69 **Public Hearings**

70 **Discussion for the following case began: 7:15pm**

71 **2<sup>nd</sup> Continuation-Case #P16-004-SUB** – Applications from J&L Terra Holding, INC.  
72 for a conventional five (5) lot subdivision on 20.331 acres on Smoke Street in  
73 Nottingham, NH. Property is identified as Tax Map 10 Lot 4 Sublot 1.

74 Mr. Landry spoke to the Conservation Commission’s (CC) meeting on May 9<sup>th</sup> and the  
75 site walk on May 10<sup>th</sup> with the Conservation Commission. He agreed to add the buffer  
76 for the Critical Wetlands down by Little River. Due to the attorney’s opinion on  
77 buildable area, he would like to meet with the Board in a couple weeks with revised  
78 plans.

79 The next meeting the Board could hear this case would be June 8, 2016.

80 Mr. Chairman stated for the record that ***“based on our attorney’s legal opinion the  
81 submitted plans shall show contiguous 30,000 square foot building area to be  
82 calculated using a setback of 50 feet from all lot lines and to use the more restrictive  
83 setback from the environmental areas; the wetlands.”*** He added that he will repeat this  
84 several more times during the meeting.

85 **Public comments 7:35pm**

86 Mr. Demeritt, chairman for the CC, presented their findings from the site walk done on  
87 Tuesday May 10<sup>th</sup>. He found that the application plans are in the high and dry areas and  
88 are the best use for the property away from the wetlands.

89 Mr. Viel asked if there was a discussion regarding the invasive species. Mr. Demeritt  
90 stated that they weren’t detrimental species.

91 **Motion made by:** Mr. Viel to “continue Case #P16-004-SUB to our first June meeting,  
92 June 8<sup>th</sup>, 2016 at 7:00pm.”

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93 **Seconded by:** Mrs. Mooney  
94 **Vote:** 7-0-0 **Motion Passed**  
95 **Discussion for this case ended:** 7:38pm  
96 **Discussion for the following case began:** 7:41pm  
97 **2<sup>nd</sup> Continuation**  
98 **Case #P16-005-SUB** – Application from Chuck Minasalli of PTC Realty Limited to  
99 review and approve a yield plan for an open space, 24 lot subdivision on 87.16 acres on  
100 Flutter Street in Nottingham, NH. Property is identified as Tax Map 44 Lot 12.  
101 **Mrs. Mooney recused herself due to being an abutter in this case**  
102 **Mr. Davies was seated for Mrs. Mooney**  
103 Mr. Coronati and Mr. Albert from Jones and Beech Engineers informed the Board that  
104 the current plans parcels don't meet the current interpretation of the setbacks. They will  
105 redesign again- 3<sup>rd</sup> redesign.  
106 Mr. Coronati wasn't at the previous meeting when the loop road was proposed. He asked  
107 what the concern was with that plan.  
108 Mr. Chairman replied that it was the proximity of the two roads exiting on to Flutter  
109 Street and the distance between the two roads.  
110 Mr. Colby reminded the applicants of a suggestion that was presented to Mr. Albert when  
111 he presented a conceptual review for this location almost a year ago; a lollipop design  
112 similar to Dwight Road. It has one road in that makes a loop back on to itself. The  
113 maximum 2000 feet regulation would go to farthest point from Flutter Street.  
114 Mr. Coronati also asked the Board for clarification of the calculation in the Multi- family  
115 regulations.  
116 Mr. Colby referenced Article II f3b. He stated that as long as there are two acres of  
117 buildable land per unit it can be done on one parcel.  
118 Mr. Chairman reiterated the Attorney's reply in bold and italics above.  
119 **Public Comments:** 7:58pm  
120 Ms. Bloom asked a few questions that were premature at this stage in the plans.  
121 **Motion made by:** Mr. Anderson to “continue Case #P16-005-SUB to June 8<sup>th</sup> 7:00pm.”  
122 **Seconded by:** Mrs. Bascom  
123 **Vote:** 7-0-0 **Motion Passed**  
124 **Discussion for this case ended:** 8:02pm  
125 **Mrs. Mooney was reseated**  
126 **Mr. Davies was un-seated**  
127 **Public Hearing Opened:** 8:04pm  
128 **Initial Hearing**  
129 **Case #P16-006-SUB** – Application from Roscoe Blaisdell of Blaisdell Survey LLC for a  
130 6 Lot Subdivision of 98+/- acres on Sachs Road and Mountain Road in Nottingham, NH.  
131 Property is owned by Kenneth Sachs and Joanne Soloman and is identified as Tax Map  
132 71 Lot 150.  
133 Mr. Colby recommended the Board accept the application as complete.  
134 **Motion made by:** Mr. Viel to “accept the application as complete for Case #P16-006-  
135 SUB.”  
136 **Seconded by:** Mr. Anderson  
137 **Vote:** 7-0-0 **Motion Passed**

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138 Roscoe Blaisdell, the surveyor, septic designer, and wetland scientist for the project,  
139 informed the Board of the plans. Mr. Sachs wants to cut off five (5) building lots from  
140 the 98 acres parent parcel located on Sachs Road and Mountain Road.  
141 Mr. Blaisdell addressed the fact that he will need to recalculate the buildable areas on lots  
142 150-1, 150-3, 150-4 due to a few 25% slopes issues. He added that all the houses will  
143 have sprinklers installed so a cistern will not be needed. All of the lots will be accessed  
144 on Mountain Road not Sachs Road.  
145 Mr. Sachs informed the Board that he has gone to the State on a preliminary basis and  
146 was informed that the driveway permits would be accepted as proposed.  
147 Mr. Chairman asked about Sachs Road being incorporated in some of the lots. He asked  
148 if the Road will be maintained as far as access and easements go.  
149 Mr. Blaisdell stated that the houses will be in the front just off Mountain Road and “life  
150 will go on as usual.”  
151 Mr. Colby added that he suggested the Deed for lots (150-1, 150-2, 150-3, 150-4, and  
152 150-5) record information about the Right of Way of Sachs Road.  
153 The Board and Mr. Sachs had discussion regarding the maintenance on Sachs Road. Mr.  
154 Sachs stated that he maintains the road.  
155 It was noted that the applicant provided an old plan from a survey done in 1993 for lots  
156 that have already been built upon. These lots have the same numbers as the current  
157 proposed lots and don’t show the location of the current proposed lots.  
158 Two options were proposed:  
159 1. Submit new plan showing the new proposed lots on the acreage  
160 2. Or a waiver for showing the whole lot  
161 Mr. Viel also noted that the plans need to show the buildable area on the remaining  
162 parcel.  
163 Mr. Colby finished addressing his notes (in file).  
164 Mr. Chairman reiterated the Attorney’s reply in bold and italics above.  
165 **Public Comments:** 8:25pm  
166 Ms. Guerra spoke of some concerns with the proposed subdivision and some language for  
167 the Deeds. She is concerned about people crossing her property on Sachs Road to gain  
168 access to the lake.  
169 Mr. Blaisdell informed her that the driveways will be off Mountain Road not Sachs Road.  
170 Mr. Morin noted that the real concern is with people allowing others to use the private  
171 boat launch on Sachs Road and allowing them lake access.  
172 Ms. Kelley spoke to the Rights of Way of Sachs Road. She expressed concern about the  
173 language speaking to the new lots that these lots will not have Rights of Way.  
174 The language regarding the Right of Way will be addressed at another hearing.  
175 Mr. Sachs assured the public that the residents of the new lots will not have lake access  
176 rights through Beach Head Drive.  
177 Mr. Roscoe asked if the Board would likely grant a waiver for showing the overall lot.  
178 Mr. Chairman stated that the Board would likely grant the waiver to not require a survey  
179 of the overall parcel but to clarify the location of the new lots on the full lot size plans.  
180 Mr. Colby recommended a continuance until June 8<sup>th</sup>.  
181 **Motion made by:** Mrs. Bascom “to continue Case #P16-006-SUB be continued until the  
182 June 8<sup>th</sup> meeting at 7:00pm.”  
183 **Seconded by:** Mr. Morin

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184 **Vote: 7-0-0 Motion Passed**  
185 **Public Hearing Closed: 8:47pm**  
186 **Public Hearing Opened: 8:49pm**  
187 **Initial Hearing**  
188 **Case #P16-007-SUB** – Application from Gary and Lorraine Anderson for a 2 Lot  
189 Subdivision of 5.215 acres on Gile Road in Nottingham, NH. Property is owned by Gary  
190 and Lorraine Anderson and is identified as Tax Map 27 Lot 1.  
191 **Mr. Anderson recused himself due to being one of the applicants**  
192 **Mr. Davies was seated for Mr. Anderson**  
193 Mr. Colby recommended the Board accept the application as complete.  
194 **Motion made by:** Mr. Viel to “accept the application for #P16-007-SUB as complete.”  
195 **Seconded by:** Mr. Morin  
196 **Vote: 7-0-0 Motion Passed**  
197 Mr. Landry and Mr. Anderson introduced themselves. Mr. Colby handed Mr. Landry his  
198 notes on the plans (in file). Mr. Landry addressed each issue.  
199 One of the notes was explaining the title “Use and Enjoyment Easement” the title means  
200 use for snow removal, large trucks like UPS deliveries etc.  
201 Mr. Landry stated that he will need to redesign the plans due to the attorney’s  
202 interpretation of the setbacks.  
203 Mr. Colby stated that the staff’s opinion is there is great hardship to show the full 30K to  
204 redesign due to the landscape and slopes. Therefore a recommendation option is to seek  
205 Zoning Board Approval.  
206 Mr. Viel noted that the application will need to go to the CC for review prior to final  
207 subdivision approval due to this section of Gile Road being a Scenic Road. (See  
208 Subdivision Regulations Section 15.3.6 sub section 2.)  
209 **Public Comment: 9:05pm**  
210 None  
211 Mr. Colby recommended a continuance until June 8<sup>th</sup>.  
212 **Motion made by:** Mrs. Bascom to “continue Case #P16-007-SUB until June 8<sup>th</sup> at  
213 7:00pm. “  
214 **Seconded by:** Mr. Morin  
215 **Vote: 7-0-0 Motion Passed**  
216 **Public Hearing Closed: 9:06pm**  
217 **Public Meeting**  
218 \*Impact Fees contract  
219 Mr. Colby explained the reason for one contract instead of two. If we get this agreement  
220 to Mr. Mayberry by the end of May then Mr. Mayberry can get the results to Board by  
221 the end of November. This is budgeted for.  
222 **Motion made by:** Mrs. Mooney to “accept this contract from BCM Planning LLC for his  
223 consultant services for the Impact Fee study.”  
224 **Seconded by:** Mr. Viel  
225 **Vote: 6-1-0 Motion Passed**  
226 Note from CC- homework to discuss at work session May 25<sup>th</sup> with CC  
227 **Mr. Anderson was reseated**  
228 **Mr. Davies returned to non-voting Alternate status**

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229 Mrs. Mooney pointed out the items in the rankings. Item #1 is a separate item requested  
230 for the Board to consider (wild life action plan).

231 The Master Plan is on the Town Web site or contact the Land Use Clerk for the sections  
232 to be e-mailed or printed.

233 **Public Comment**

234 None

235 **Board of Selectman and Staff/ Board Members Update**

236 Tiler Eaton, sitting for Ms. Andersen, informed the Board that there has been some  
237 discussion regarding closing certain roads to large trucks. He also informed the Board  
238 that the “Old Town Hall” may be leased to Nottingham Community Child Care Center.  
239 Mr. Morin announced that he has reconsidered and would accept an appointment to the  
240 CIP committee.

241 **Motion made by:** Mr. Viel to “appoint John Morin as our representative to the CIP  
242 committee.”

243 **Seconded by:** Mrs. Mooney

244 **Vote:** 7-0-0 **Motion Passed**

245 Mr. Anderson informed the Board that he is attending the Annual SRPC meeting on May  
246 26<sup>th</sup> and looks forward to giving an update at the next meeting.

247 Mr. Viel reminded the Board to send comments for the Site Plan Regulations update to  
248 Mr.Colby by the May 25<sup>th</sup> meeting.

249 **Approval of Minutes**

250 April 13, 2016

251 **Motion made by:** Mr. Viel to “approve the minutes of April 13, 2016 as amended.”

252 **Seconded by:** Mrs. Bascom

253 **Vote:** 7-0-0 **Motion Passed**

254 April 27, 2016- Tabled

255 **Adjournment**

256 **Motion made by:** Mrs. Bascom

257 **Seconded by:** Mr. Anderson

258 **Vote:** 7-0-0 **Motion Passed**

259 Adjourned at: 9:23pm

260 Respectfully submitted,

261 JoAnna Arendarczyk

262 Land Use Clerk